



General Assembly

January Session, 2009

Raised Bill No. 785

LCO No. 2696

02696_____GL_

Referred to Committee on General Law

Introduced by:
(GL)

AN ACT CONCERNING CONSTRUCTION CHANGE ORDERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-158j of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2009*):

3 (a) Each construction contract shall contain the following
4 provisions: (1) A requirement that the owner pay any amounts due
5 any contractor, subcontractor or supplier in a direct contractual
6 relationship with the owner, whether for labor performed or materials
7 furnished, not later than thirty days after the date any written request
8 for payment has been made by such contractor, subcontractor or
9 supplier; (2) a requirement that the contractor pay any amounts due
10 any subcontractor or supplier, whether for labor performed or
11 materials furnished, not later than thirty days after the date the
12 contractor receives payment from the owner which encompasses labor
13 performed or materials furnished by such subcontractor or supplier;
14 [and] (3) a requirement that the contractor shall include in each of its
15 subcontracts a provision requiring each subcontractor and supplier to
16 pay any amounts due any of its subcontractors or suppliers, whether

17 for labor performed or materials furnished, not later than thirty days
18 after the date such subcontractor or supplier receives a payment from
19 the contractor which encompasses labor performed or materials
20 furnished by such subcontractor or supplier; and (4) a provision that,
21 when the cumulative sum of the total pending construction change
22 orders or other pending change directives exceeds five per cent of the
23 original total contract or subcontract cost, the contractor or any
24 subcontractor who has performed work under such pending
25 construction change orders or other pending change directives is
26 relieved of any express or implied duty to perform any future changes
27 to the work under the terms of the contract or subcontract. For
28 purposes of this subsection and subsection (b) of this section, "pending
29 construction change order" or "other pending change directive" means
30 an authorized directive for extra work that has been issued to a
31 contractor or a subcontractor for which payment is not processed as
32 provided in subdivisions (1) to (3), inclusive, of this subsection,
33 through no fault of the contractor or subcontractor who has performed
34 the work.

35 (b) Each payment made in accordance with the requirements of
36 subsection (a) of this section shall include a statement showing the
37 status of all pending construction change orders, other pending change
38 directives and approved changes to the original contract or
39 subcontract. Such statement shall identify the pending construction
40 change orders and other pending change directives, and shall include
41 the date such change orders and directives were initiated, the costs
42 associated with their performance and a description of the work
43 completed.

44 ~~[(b)]~~ (c) (1) If payment is not made by an owner in accordance with
45 the requirements of subdivision (1) of subsection (a) of this section or
46 any applicable construction contract, such contractor, subcontractor or
47 supplier shall set forth its claim against the owner through notice by
48 registered or certified mail.

49 (2) If payment is not made by a contractor in accordance with the
50 requirements of subdivision (2) of subsection (a) of this section or any
51 applicable construction contract, the subcontractor or supplier shall set
52 forth its claim against the contractor through notice by registered or
53 certified mail.

54 (3) If payment is not made by a subcontractor or supplier in
55 accordance with the provisions of subdivision (3) of subsection (a) of
56 this section, the subcontractor or supplier to whom money is owed
57 shall set forth its claim against the subcontractor or supplier who has
58 failed to comply with the provisions of said subdivision (3) through
59 notice by registered or certified mail.

60 (4) Ten days after the receipt of any notice specified in subdivisions
61 (1), (2) and (3) of this subsection, the owner, contractor, subcontractor
62 or supplier, as the case may be, shall be liable for interest on the
63 amount due and owing at the rate of one per cent per month. Such
64 interest shall accrue beginning on the date any such notice is received.
65 In addition, such owner, contractor, subcontractor or supplier, upon
66 written demand from the party providing such notice, shall be
67 required to place funds in the amount of the claim, plus such interest
68 of one per cent per month, in an interest-bearing escrow account in a
69 bank in this state, provided such owner, contractor, subcontractor or
70 supplier may refuse to place the funds in escrow on the grounds that
71 the party making such demand has not substantially performed the
72 work or supplied the materials according to the terms of the
73 construction contract. In the event that such owner, contractor,
74 subcontractor or supplier refuses to place such funds in escrow and
75 such owner, contractor, subcontractor or supplier is found to have
76 unreasonably withheld payment due a party providing such notice,
77 such owner, contractor, subcontractor or supplier shall be liable to the
78 party making demand for payment of such funds and for reasonable
79 attorneys' fees plus interest on the amount due and owing at the rate of
80 one per cent per month. In addition, any owner, contractor,
81 subcontractor or supplier who is found to have withheld payments to

82 a party providing such notice in bad faith shall be liable for ten per
83 cent damages.

84 [(c)] (d) No payment may be withheld from a subcontractor or
85 supplier for work performed or materials furnished because of a
86 dispute between a contractor and another contractor, subcontractor or
87 supplier.

88 [(d)] (e) This section shall not be construed to prohibit progress
89 payments prior to final payment of the contract and is applicable to all
90 subcontractors and suppliers for material or labor whether they have
91 contracted directly with the contractor or with some other
92 subcontractor on the work. Each owner that enters into a contract
93 under this section and fails or neglects to make payment to a
94 contractor for labor and materials supplied under a contract, as
95 required pursuant to this section, shall, upon demand of any person
96 who has not been paid by the contractor for such labor and materials
97 supplied in the performance of the work under the contract, promptly
98 pay the person for such labor or materials. Demand for payment shall
99 be served on the owner and a copy of each demand shall be sent to the
100 contractor by certified mail, return receipt requested to any address at
101 which the owner and contractor conduct business. If the owner fails to
102 make such payment, the person shall have a direct right of action
103 against the owner in the superior court for the judicial district in which
104 the project is located. The owner's obligations for direct payments to
105 the contractor, subcontractors or suppliers giving notice pursuant to
106 this section shall be limited to the amount owed to the contractor by
107 the owner for work performed under the contract at the date such
108 notice is provided.

109 Sec. 2. Section 49-41a of the general statutes is repealed and the
110 following is substituted in lieu thereof (*Effective July 1, 2009*):

111 (a) When any public work is awarded by a contract for which a
112 payment bond is required by section 49-41, the contract for the public
113 work shall contain the following provisions: (1) A requirement that the

114 general contractor, within thirty days after payment to the contractor
115 by the state or a municipality, pay any amounts due any subcontractor,
116 whether for labor performed or materials furnished, when the labor or
117 materials have been included in a requisition submitted by the
118 contractor and paid by the state or a municipality; (2) a requirement
119 that the general contractor shall include in each of its subcontracts a
120 provision requiring each subcontractor to pay any amounts due any of
121 its subcontractors, whether for labor performed or materials furnished,
122 within thirty days after such subcontractor receives a payment from
123 the general contractor which encompasses labor or materials furnished
124 by such subcontractor; and (3) a provision that, when the cumulative
125 sum of the total pending construction change orders or other pending
126 change directives exceeds five per cent of the original total contract or
127 subcontract cost, the contractor or any subcontractor who has
128 performed work under such pending construction change orders or
129 other pending change directives is relieved of any express or implied
130 duty to perform any future changes to the work under the terms of the
131 contract or subcontract. For purposes of this subsection and subsection
132 (b) of this section, "pending construction change order" or "other
133 pending change directive" means an authorized directive for extra
134 work that has been issued to a contractor or a subcontractor for which
135 payment is not processed as provided in subdivisions (1) and (2) of
136 this subsection, through no fault of the contractor or subcontractor
137 who has performed the work.

138 (b) Each payment made in accordance with the provisions of
139 subsection (a) of this section shall include a statement showing the
140 status of all pending construction change orders, other pending change
141 directives and approved changes to the original contract or
142 subcontract. Such statement shall identify the pending construction
143 change orders and other pending change directives and shall include
144 the date such change orders and directives were initiated, the costs
145 associated with their performance and a description of the work
146 completed.

147 [(b)] (c) If payment is not made by the general contractor or any of
148 its subcontractors in accordance with such requirements, the
149 subcontractor shall set forth his claim against the general contractor
150 and the subcontractor of a subcontractor shall set forth its claim
151 against the subcontractor through notice by registered or certified
152 mail. Ten days after the receipt of that notice, the general contractor
153 shall be liable to its subcontractor, and the subcontractor shall be liable
154 to its subcontractor, for interest on the amount due and owing at the
155 rate of one per cent per month. In addition, the general contractor,
156 upon written demand of its subcontractor, or the subcontractor, upon
157 written demand of its subcontractor, shall be required to place funds in
158 the amount of the claim, plus interest of one per cent, in an interest-
159 bearing escrow account in a bank in this state, provided the general
160 contractor or subcontractor may refuse to place the funds in escrow on
161 the grounds that the subcontractor has not substantially performed the
162 work according to the terms of his or its employment. In the event that
163 such general contractor or subcontractor refuses to place such funds in
164 escrow, and the party making a claim against it under this section is
165 found to have substantially performed its work in accordance with the
166 terms of its employment in any arbitration or litigation to determine
167 the validity of such claim, then such general contractor or
168 subcontractor shall pay the attorney's fees of such party.

169 [(c)] (d) No payment may be withheld from a subcontractor for
170 work performed because of a dispute between the general contractor
171 and another contractor or subcontractor.

172 [(d)] (e) This section shall not be construed to prohibit progress
173 payments prior to final payment of the contract and is applicable to all
174 subcontractors for material or labor whether they have contracted
175 directly with the general contractor or with some other subcontractor
176 on the work.

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	<i>July 1, 2009</i>	42-158j
Sec. 2	<i>July 1, 2009</i>	49-41a

Statement of Purpose:

To limit the amount of unapproved change order work imposed on contractors and subcontractors.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]